

Services prior to application for exemption. A religious organization that applies for recognition of its status more than 15 months from the end of the month in which it is organized will not be treated as a section 501(c)(3) organization for the period before its application was filed and services performed by its employees during that period are not excepted from employment for FICA and FUTA purposes.

Advice has been requested whether under the circumstances described below, services performed for an organization are subject to the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act (chapters 21 and 23, subtitle C, of the Internal Revenue Code of 1954) prior to the date the organization gives notice to the Internal Revenue Service that it is applying for recognition of tax-exempt status under section 501(a) of the Code as an organization described in section 501(c)(3).

A religious organization, other than one described in section 508(c)(1)(A) of the Code, was incorporated on October 1, 1971. The organization filed Form 1023, Application for Recognition of Exemption, on April 1, 1973. As a result, the Internal Revenue Service determined on December 19, 1973, that the organization was exempt from taxation as an organization described in section 501(c)(3).

Section 508(a)(1) of the Code provides, in part, that an organization that is organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it gives notice to the Secretary or the Secretary's delegate that it is applying for such status. Section 508(a)(2) further provides such organization shall not be treated as a section 501(c)(3) organization for any period before the giving of such notice, if such notice is given after the time prescribed in the regulations for giving the notice.

Section 1.508-1(a)(2) of the Income Tax Regulations provides, in part, that an organization that is organized after October 9, 1969, must give notice that it is applying for exemption under section 501(c)(3) before March 22, 1973, or within 15 months from the end of the month in which it was organized, whichever is later.

Section 3121(a) of the Federal Insurance Contributions Act and section 3306(b) of the Federal Unemployment Tax Act provide that 'wages' means all remuneration for employment. Section 3121(b)(8)(B) and section 3306(c)(8) of the respective Acts, in part, except from employment service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a).

Whether services performed for an organization are excepted from employment under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act depends on the status of the organization. In the instant case, the organization applied for section 501(c)(3) status on April 1, 1973, which is neither within 15 months from the end of the month in which it was organized, nor before March 22, 1973. Therefore, the organization will not be treated as a section 501(c)(3) organization before the giving of such notice.

Accordingly, services performed by employees of the organization before April 1, 1973, are not excepted from 'employment' and remuneration for such services is subject to the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act.